
Deregulating Transportation

Tracking the Progress

Thomas Gale Moore

AT A 1971 CONFERENCE on promoting competition in regulated markets, Merton Peck of Yale University said he had attended a conference on the same theme ten years earlier and was looking forward to another one in another ten years. Apparently, what he did not expect in the interim was real progress toward deregulation.

Professor Peck was too pessimistic. Two measures to reform transportation regulation have been enacted in the last two years, a major reform for a relatively minor industry (air cargo) and a minor reform for a major industry (railroads). Moreover, the future looks good for additional deregulation. Congress, with the urging of the Carter administration is likely to relax airline regulation before too long. And, for the first time in modern history, there is now a chance to reduce regulation of trucking.

A Major Reform for a Minor Industry

In November 1977 the President signed a bill (H.R. 6010) making entry into the air cargo industry virtually free and giving operators wide discretion in setting rates. As of November 1978, any U.S. citizen will be able to submit an application to operate an all-cargo service, and the Civil Aeronautics Board (CAB) must issue a certificate within 180 days, unless the

Thomas Gale Moore is senior fellow at the Hoover Institution and adjunct scholar of the American Enterprise Institute.

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applicant is found not "fit, willing and able." This means that both aspiring and existing air cargo carriers (including passenger airlines that operate all-cargo services) will be able to initiate or extend their all-cargo operations anywhere within the forty-eight contiguous states and to use aircraft of any size. Furthermore, air freight operators (both all-cargo and combination freight) will be able to charge any rates, with certain exceptions, and the board loses its power to suspend challenged rates pending a hearing. Rates will still have to be filed with the CAB, however, and can be held unlawful if the CAB finds them to be unjustly discriminatory or predatory, or to represent undue preference or deceptive practices under existing regulations.

Why did this reform, certainly a larger step toward complete deregulation than is being contemplated for any other industry, sail through Congress so easily? For one reason, air cargo—which moved less than half of 1 percent of U.S. domestic freight in 1975—is only a minor (though fast-growing) industry. More important, all the firms that are principally engaged in the air freight business—Flying Tiger Line, Federal Express, Summit Airlines, Seaboard World, and Airlift International—supported the legislation, while the major air carriers, for whom air freight is a smallish item, were only mildly opposed. Furthermore, shippers as a group did not take a strong concerted stand, probably because most of them use air freight for special occasions and not as a bread-and-butter service. Thus, the American Retail Federation supported free entry but wanted the CAB to keep control over maximum rates;

the National Industrial Traffic League agreed about rates but favored relaxed, not free, entry. Finally, organized labor, although generally hostile to deregulation for any sector of the air transport industry, was more concerned about scheduled passenger service than cargo.

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In short, the suddenness of the deregulation of air cargo, carried through despite some opposition by shipper groups, the Teamsters, and most of the large certificated carriers, is a hopeful sign, but not much more than that. It does show, I think, that economists have successfully demonstrated the public benefits of free markets in transportation—successfully enough to bring about change in the absence of strong countervailing power.

A Minor Reform for a Major Industry

The major reform of a minor industry was relatively easy, but the minor reform of a major industry—the railroads—was achieved only with great difficulty. After twenty years and more, the mountain labored and brought forth the Railroad Revitalization and Regulatory Reform Act of 1976, called the 4-R Act. This establishes a narrow “no suspend” zone of reasonableness¹ and encourages the use of seasonal and regional rates, but makes abandonment of lines even more difficult than before.

The 4-R Act provides new standards for just and reasonable rates: a rate cannot be considered unjustly or unreasonably low if it at least equals variable costs (costs that vary with the level of output produced); and a rate cannot be considered too high unless the carrier has “market dominance.” In addition, carriers cannot be required to hold their rates at a particular level to protect the traffic of any other carrier (or mode of transport) unless the proposed lower rate is below variable cost. Finally, the act provided for a two-year experiment (the “Yo-Yo” provision) whereby railroads could raise or lower rates 7 percent from the level at the beginning of each year without

fear of suspension—although the reasonableness of a change could be questioned and the new rate ultimately rejected, and although a rate could still be suspended if market dominance were found to exist. Very few “Yo-Yo” rates were filed (all of them increases); partly because the provision offered so little additional rate freedom.

The Interstate Commerce Commission has established three criteria for market dominance so strict that they seriously conflict with the rate flexibility intended by Congress and the administration. First, the railroad is presumed to have market dominance if it has a market share greater than or equal to 70 percent of the relevant market. (About 45 percent of current railroad traffic is, in the commission’s view, likely to meet this market dominance test.) Second, the railroad is presumed to have market dominance, no matter how small its market share, if the rate equals or exceeds 160 percent of variable cost.² (About 11 percent of current traffic moves at rates estimated by the ICC to be equal to or more than 160 percent of variable costs.) Third, market dominance exists if shippers or consignees have an investment in rail-related equipment or facilities large enough to prevent or make impractical the use of another carrier or mode of transport. (About one-quarter of rail traffic would meet this test.)

Altogether the commission estimated that some 48.5 percent of railroad traffic would meet one or more of these tests. Of the non-market-dominant traffic, some 57 percent is carried at rates calculated by the ICC to be below variable cost and therefore noncompensatory. Since railroads are free to raise these rates to variable costs, the fact that they fail to do so implies that the rates cover marginal costs and that competitive conditions are such that rates cannot profitably be increased.

¹ A “zone of reasonableness” is a range, normally a certain percentage above and below prevailing rates, within which carriers may raise or lower rates. The concept is usually coupled with the limitation that rate changes within the zone, while they may not be suspended forthwith, may be investigated and ultimately declared unlawful (and presumably any excess revenues refunded).

² If either the first or the second condition is met, there is said to be a “rebuttable presumption” that the carrier has market dominance, meaning that the carrier may contest the point but that the burden of proving that it does not have market dominance is on the carrier.

Generally, the ICC's market dominance test has kept the railroads from seeking higher rates where shippers would pay them and has authorized the railroads to charge higher rates where market conditions will not permit them. Hence, it has not led to rate flexibility. In fact the only real improvement in regulation as a result of the 4-R Act has been some encouragement of seasonal rates: three such rates have been filed.

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While the 4-R Act is too new to be adequately judged, it is clear that its interpretation by the ICC, especially the definition of market dominance, is frustrating the intent of Congress. Moreover, so far, the railroads' use of the act to go after new traffic has been meager.

There are at least two lessons to be learned from the 4-R Act. First, the railroads are clearly reluctant to cut rates to attract business from their competitors. The reasons may be that price cuts would draw too little traffic to be profitable, that lower rates would be below marginal costs, or that railroad executives are not sufficiently market-oriented to exploit the existing opportunities. Probably all factors are at work. Second, Congress is timid about permitting free pricing, and the ICC, like most other regulatory agencies, will continue to stifle competition. In other words, significant regulatory reform is difficult to achieve.

If reform of airline or trucking regulation is to be significant, it must go beyond what the Congress did for railroads and must be structured so that an unfriendly regulatory commission cannot frustrate its purposes.

Airline Deregulation

The air cargo bill was spun off from the airline deregulation bill when it became apparent that the latter would not be passed in 1977. But air passenger service is nonetheless the next candidate for deregulation.

Education of Policy-Makers. During the Great Depression of the 1930s, many economists and policy-makers lost faith in the ability of the market to handle economic affairs. In the transportation area, this contributed to the passage of the 1935 Motor Carrier Act and the 1938 Civil Aeronautics Act.

Opinion changed slowly. Even through the 1950s, economists and policy-makers who were concerned with regulation were primarily interested in making it work better, not in scrapping it. Not until 1962, when Richard Caves published *Air Transport and Its Regulators*, did the tenor of academic thinking begin to change. Caves concluded that "the air-transport industry has characteristics of market structure which would bring market performance of reasonable quality without any economic regulation. . . ." His was the first major empirical and theoretical work to come down clearly for airline deregulation.

Michael Levine, in his 1965 article on air transportation within California, first pointed out that an unregulated intrastate carrier performs better than a CAB-certificated airline. Five years later, William A. Jordan's *Airline Regulation in America: Effects and Imperfections* brought to a wider audience the evidence on the difference between a CAB-regulated airline industry and airlines operating in a largely unregulated environment. To this day the strongest evidence in favor of airline deregulation is the performance of unregulated intrastate carriers in California and Texas.

The annual reports of the Council of Economic Advisers give one indication of what economists and policy-makers were thinking about regulation in the post-war period. The first mention of transportation regulation appeared in the 1965 *Annual Report* and amounted to two paragraphs; the ICC was mentioned once and the CAB not at all. The next year's report contained a much stronger several-page section on surface transportation. The first mention of CAB regulation, one paragraph long, came in the 1970 report and the first extensive treatment in 1971.

Congress has lagged behind the executive branch in accepting the idea of deregulation. In 1975, the Senate Subcommittee on Administrative Practice and Procedure, chaired by Senator Edward Kennedy (Democrat, Massachusetts), held extensive hearings on airline

regulation and issued a major report indicting the system. In spring 1977, the Senate Subcommittee on Aviation covered the same ground in additional hearings. Yet, in September 1977, Senator Daniel Inouye (Democrat, Hawaii) told a meeting of that subcommittee that the arguments for automatic entry were "pure nonsense" and that there was no evidence that deregulation would produce lower fares. As for the House of Representatives, several bills, including one proposed by the Ford administration, were introduced in 1975-77 and the House Subcommittee on Aviation held hearings in 1976 and 1977.

For those who have become discouraged with the pace of airline deregulation, the preceding narrative should give some perspective. The economics profession itself was not convinced of the merits of deregulation until the 1960s. A fair summary might be that economists were educating themselves on the subject throughout the 1960s and that general agreement began to emerge only after the appearance of Jordan's book in 1970. The last eight years have been spent convincing the media, the Congress, and government officials.

Current Proposals. In late 1977—after twenty-two markup sessions that can be generally characterized as exercises in education—the Senate Committee on Commerce, Science, and Transportation approved (11-2) the Kennedy-Cannon bill. According to *Congressional Quarterly*, much of the delay was caused by committee members' unfamiliarity with the regulation issue. The airline bill being considered in the House, one sponsored by Representative Glenn Anderson (Democrat, California), is much like Kennedy-Cannon. The Committee on Public Works and Transportation plans to act on this bill in 1978.

The Kennedy-Cannon bill, as voted out of committee, would provide reform in two essential areas, rates and entry (including route flexibility):

- Airlines would be allowed to raise fares as much as 5 percent or lower them as much as 35 percent without CAB approval.

- Any existing airline would be allowed automatically to enter one new route of not more than 3,000 miles in each of the first two years after enactment; in the third year, each airline could enter two new routes a year, not

exceeding 3,000 miles total, without CAB approval. Moreover, each airline could designate three routes that would be protected from automatic entry by other airlines during the first three years, two routes in the fourth year, and one in the fifth; after five years no route could be protected, but the Civil Aeronautics Board would have the option of making a change if the program had created hardships for some airlines or communities.

- Airlines could drop routes, but only after ninety days' notice. "Essential" services to small communities could be subsidized by the CAB.

- A new firm desiring to become a certificated carrier would need only show that its proposed service was "consistent with," not that it is "required by," public convenience and necessity. Although the committee decided, after a long battle, that the burden of proving such consistency would remain on the applicant, the language change is designed to diminish that burden. How significant the change would prove to be, in and of itself, cannot be predicted. The bill would also eliminate the principal hurdle to establishing public convenience and necessity—the fact that this phrase has long been interpreted as protecting existing carriers against competition that would substantially injure them. The bill states that more innovative or efficient methods of operation or significant price reductions are consistent with public convenience and necessity and that the possibility a potential new competitor will divert revenue from an existing carrier is not necessarily inconsistent with the public convenience and necessity.

Prospects. The academic community has done the research on airline deregulation. The prospects for reform now lie in how successful various groups—including the academy—will be in influencing the Congress. The major proponents of at least partial deregulation are the Carter White House, the Council on Wage and Price Stability, the Council of Economic Advisers, the Antitrust Division of the Department of Justice, a somewhat reluctant secretary of transportation, and some voices from the Civil Aeronautics Board—in particular, its chairman and some staff. In addition, a group entitled the Ad Hoc Committee on Airline Regulatory Reform—which includes a highly

unlikely assortment of organizations representing conservative Republicans, liberal Democrats, Naderites, retailers, retired persons, students, and business interests—is strongly supporting the effort. United Airlines, Pan American Airlines, Frontier Airlines, Hughes Air West, and Pacific Southwest Airlines also favor change.

The provisions in the Senate bill for protecting small towns appear to be adequate to assuage the worries of most small communities that they would lose service under deregulation. On this subject testimony before the Senate last spring tended to be muted.

Opposing deregulation are the other major airlines—which claim that United is on the other side because it has the largest network and so is in a good position to gain from the proposed route flexibility. Organized labor is also strongly opposed. No doubt labor understands that deregulation would be more likely to lead to airline expansion with increased passenger traffic than to a significant reduction in airline jobs. What organized labor really fears is that the growth of non-union airlines would spread if entry into the airline business were reasonably easy, and that this would put downward pressure on the pay scales and employment opportunities for unionized flight crews and support personnel. Furthermore, the labor protective provisions added to the Kennedy-Cannon bill are designed only to ease the transition for unemployed airline workers, and not to maintain union wages well above non-union wages. Airline labor therefore will lobby hard to bottle up any bill.

Banks and insurance companies are also resisting the bill. According to William McCurdy, former vice president of Equitable Life Assurance Society, “it is the consensus of the financial community that a period of substantial upheaval, if not chaos, will result . . . while present company positions change.”

In recent months, as support for deregulation has been gathering momentum, the airlines have been engaging in some price competition in an attempt to convince the public that reform is not necessary. This, along with the liberalization of charter rules, explains the rapid expansion of discount fares that has occurred. But at the same time, CAB decisions to deny some rate cuts in order to protect the charter carriers point up the problem of con-

tinued regulation, even under a chairman who favors competition.

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Nevertheless, for the first time since airlines were regulated in 1938, it now seems likely that a partial deregulation bill will be enacted. The only question would seem to be timing. My guess is that it will occur within three or four years, maybe even this year. Once this happens, no further deregulation can be expected in the airline industry for at least another decade. Before going further, the Congress and public officials will want to see how this bill works. That will depend in part on how the CAB interprets its provisions. Will the board, for example, be liberal in approving applications for operating certificates of public convenience and necessity, or will it construe the words “consistent with” very strictly? In the meantime, the focus of regulatory reform will shift to the trucking industry.

Motor Carriers

The prospects for significant deregulation of the trucking industry are not nearly so bright as the prospects for airline deregulation. No bill is currently before Congress. The secretary of transportation is opposed to any change in the statute. And the White House, though it generally favors the concept, has not yet indicated what its position will be.³

Education of Policy-Makers. Virtually from the date the Motor Carrier Act was passed, economists have criticized the idea of regulating such an inherently competitive industry. In the ensuing four decades, the effects of regulation on trucking rates, costs, efficiency, and service quality have been subjected to consid-

³ According to press reports, President Carter is considering three options: legislation mandating significant deregulation of the airline industry variety, reforms undertaken by the ICC backed up by a congressional resolution to encourage action, and ICC reforms only.

erable analysis. It has been shown, for example, that the trucking of commodities exempt from ICC control works well, with many firms having operated in that segment of the industry for years. It has also been shown that rates in regulated trucking are considerably inflated. Various estimates have been made of the costs of regulation and of the benefits to special interest groups that regulation produces. The unregulated British and Australian trucking systems have been described. The subjects of service to small communities and of less-than-truckload shipments have been well analyzed. Yet Congress remains unimpressed.

In 1955 Secretary of Commerce Sinclair Weeks chaired a cabinet committee that drew up a mixed bag of recommendations on transportation policy. On the one hand, it proposed tighter ICC control over exempt agricultural trucking and private trucking—a proposal that would be hard to imagine today. On the other hand, it proposed a zone of reasonableness for railroad rates—with minimum rates equal to variable costs, maximum rates at least equal to full costs, and rates for traffic with no substantial competition held to a “reasonable” limit. The zone-of-reasonableness concept has appeared in various regulatory reform proposals in recent years and, as noted, was timidly introduced in 1976 in the 4-R Act.

In 1962 President Kennedy proposed a bill providing for some significant deregulation of railroads, trucks, and barges. A similar bill was introduced in 1963 and further hearings were held. The next year the House Committee on Interstate and Foreign Commerce put together a bill that included complete deregulation of agricultural carriage by all modes of transport. The Johnson administration, believing it had to oppose that great a degree of deregulation, allowed the bill to die.

In the mid-1960s a presidential task force on transportation policy recommended, among other things, the removal of legal barriers to entry and route abandonment on the part of common carriers (rail, truck, and airline), the elimination of most of the ICC’s authority over minimum rates, repeal of the long-haul/short-haul provisions of the Interstate Commerce Act, amendment of that act to deny carriers the right to request suspension of proposed rates, and amendment of the Federal Aviation Act to eliminate rate regulation of all unsubsidized

domestic air-passenger transport. No legislation resulted, but the task force’s report was widely circulated in the government.

The next major attempt to amend the Interstate Commerce Act occurred in 1971 when the Department of Transportation proposed the Transportation Regulatory Modernization Act (which the White House had decided not to sponsor because of Teamster opposition). This proposal would have reduced control over entry into trucking, facilitated the broadening of existing certificates both as to the commodities that could be carried and the routes that were authorized, and established a zone of reasonableness for rates. (The zone specified ranged from a floor at variable cost to a ceiling at 150 percent of fully allocated cost. Any proposed rate within this zone would have been, per se, legal unless it violated the long-haul/short-haul clause or was unjust, preferential, prejudicial, or unduly discriminatory.)

Both the Senate and the House held extensive hearings on this bill in the spring of 1972, but no bill was passed. The bankruptcy of the Penn Central in 1972 and the ensuing effort to reorganize the northeast rail network both helped and hurt the deregulation effort. While these events focused attention on transportation, especially rail, and made some congressional response imperative, they also diverted attention from the costs of trucking regulation. Moreover, although regulation played a part in the sorry financial position of the railroads, there were more immediate reasons for the Penn Central’s collapse. The most that could be expected by even the most optimistic deregulators was that over time some deregulation would help the railroads, while possibly making them worse off in the short run. What was needed was a “quick fix” and not a fundamental change in the rules. The eventual passage of the 4-R Act can, however, be attributed to the Penn Central debacle and to the earlier studies on the advantages of decreased regulation. Indeed, the act’s deregulation provisions were made a condition of Ford administration support of the financing provisions.

The Prospects for Motor Carrier Reform. As mentioned before, the prospects for even partial deregulation of trucking are not great. The subject is not of paramount interest to voters; and consumer groups, though they favor de-

regulation in principle, are not likely to give it their best efforts.

Strong approval can, however, be expected from the academic community, the Antitrust Division of the Justice Department, the Council on Wage and Price Stability, the Council of Economic Advisers, and key members of the White House staff. In addition, Senator Kennedy, who was so instrumental in stimulating congressional interest in airline reform, is planning to do the same thing for trucking. His antitrust subcommittee held hearings in October 1977 on legalized rate agreements and rate fixing by motor carriers, and the hearings scheduled for this year will cover all aspects of motor carrier regulation.

Some support for deregulation may, it is true, arise within the trucking industry itself. The editor and publisher of *Overdrive*, a magazine for independent truckers, has advocated deregulation and there are certificated carriers, both large and small, that could benefit from reducing entry restrictions. But outside of government and the academy, it is still hard to find much support for the idea. Among ship-

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pers, some are for free entry into the industry, while many others—concerned about low rates for their competitors or higher rates for themselves—are fearful of changing the system. Thus, while the users of airlines (the passengers) favor a freer market in that industry, users of trucking services do not unanimously or even overwhelmingly support it in theirs. Moreover, small communities worry that freer exit from the market would mean that they would lose the services they now receive. Guarantees may have to be included in any proposal in order to mitigate their opposition.

But it is the owners of operating rights (who fear for the value of their assets), along with the labor unions and the railroads, that are most strongly opposed. A provision for buying out the owners' operating rights, proposed recently in a *New York Times* editorial, might help move a major deregulation bill through Congress—even though many would

be opposed to such a use of taxpayer money, especially since large numbers of these owners are quite wealthy. In any case, paying off the owners would not eliminate the vehement opposition of organized labor. The Teamsters fear, with justification, that free entry would open the industry to a flood of non-union trucking firms. Certainly, owner-operators would be a major threat to the high wages Teamsters currently receive. Finally, determined resistance can be expected from the railroad industry, because deregulation would produce lower freight rates for motor carriers, enabling them to capture traffic from the railroads. While railroad managements could and would respond with lower rates, they do not believe that lower rates—let alone the loss of business to trucks—would be in their interest.

Supporters of regulatory reform have not yet faced this last issue. The fact is that deregulation of trucking would probably make the already sick railroad industry sicker in the short term, even if it resulted in the elimination of railroad regulation so that the railroads would be able to compete. Thus trucking deregulation could lead to significant pressures to subsidize or nationalize our rail system. Whereas total deregulation of all surface transport should eventually produce a healthier and slimmer railroad industry, the transition could be so painful that Congress may not take the first step.

Unlike the CAB, the Interstate Commerce Commission is opposed to any tampering with its authority and is attempting to demonstrate that the goals of deregulation can be achieved without deregulation itself. Thus the commission has enlarged the unregulated commercial zones around big cities—to the chagrin of many in the trucking industry. In addition, the commission has been holding hearings on proposals to liberalize entry restrictions, finding, of course, that there are industry spokesmen on both sides of the issue. Moreover, the ICC is looking into the question of rate bureaus. The threat of congressional action has, at least, led to ICC activity.

If Congress deregulates trucking, it will be a testimony that academic scholarship and academic perserverance have convinced the public, the Congress, and government officials (who have, individually, not very much to gain) of the rightness of the cause. But if regulation of trucking is—as some recent studies

seem to suggest—a process through which important groups receive benefits, there is little hope that Congress will act. The individual gainers would be unlikely to gain significantly, while the losers would suffer large losses.

Perhaps there would be a chance, though, even in this case, if consumer groups, Common Cause, the media, and a combination of liberals and free market conservatives could be induced to work for deregulation. At this time, two influential senators, Edward Kennedy and Charles Percy (Republican, Illinois) are actively in favor of change. With White House support, deregulation of trucking is possible in the next three to five years.

Conclusion

The best chance for regulatory reform now lies in the airline industry, where the case for change has been clearly made and its proponents are in a strong political position.

If airline reform fails in Congress, there is no hope for deregulating any other sector. But even if airline reform does occur, achieving trucking deregulation will be difficult. Yet, the probability is not zero and the industry is clearly worried. If motor carriers are deregulated, it will be important to turn again to the railroad industry and make a bold move to reduce ICC controls there. With trucking even partially free, railroad managements would probably support deregulation of their operations, leaving only shippers and labor opposed.

To end on an optimistic note, economists have shown that their profession can be influential. Without the studies and testimony of scholars, there would have been no movement towards deregulation. While economists can become discouraged with the pace at which Congress adopts their obviously brilliant analyses, given the opposition and given that economists generally “haven’t met a payroll or run a railroad,” it is amazing that they have had so much influence. ■

Lawyering and Democratic Capitalism (Continued from page 22)

mission, whose new chairman promises “innovative” litigation, would take the hint.

Plainly, both adding judges and limiting discovery procedures will reduce judicial bottlenecks and permit even more questions to be

brought to court. Is that really desirable? Perhaps it is only as the legal process becomes clogged and, therefore, judicial decision-making less available that private and political institutions will regain their own decision-making capacity. Of course, that suggests a form of rationing, which is always an extreme remedy—and particularly so here, since we cannot be sanguine that the courts or Congress would adopt the proper methodology to order the queue. It might well be those matters least appropriate for judicial resolution that gain the highest priority. (Note that the Speedy Trial Act of 1974, one attempt to order the queue by giving criminal cases a first priority, has had perverse consequences because of unrealistic time limits.) In any event, those at the bottom of the queue will surely protest their placement vigorously, claiming discrimination. Even now, Supreme Court efforts to limit class-action relief have been attacked as anti-poor, anti-consumer, and so on. However, to those who would so protest, I offer the thought that they might be benefitted in the long run, since they might gain greater effectiveness in the political process and that might be infinitely more valuable than reliance on adjudicators.

Still, we face a dilemma. Unless our political institutions mount a virtual counterrevolution against the legal process, our only hope of preserving the vigor of democratic capitalism may be for the legal process to become so unwieldy that private and political decision-making gain a comparative advantage. But then the legal process would be less available for those matters for which it is truly needed.

Is it too much to ask of American lawyers that they accept major responsibility for finding ways out of this dilemma? I do not think so. After all, American democracy was founded and set on its course by lawyers—albeit lawyers who were simultaneously farmers, businessmen, architects, and philosophers. Chief Justice Burger has repeatedly, but virtually alone, warned of the dangers of an over litigious society but he is, of course, constrained in what he can say; he cannot criticize specific legislative proposals or, except in his opinions, judicial imperialism. He deserves more support from an American bar that eschews self-interest (as far as that is possible) and concerns itself with the harmful impact of an ever expanding legal process on our society. ■